

## § 1.401(a)(9)-7

## 26 CFR Ch. I (4-1-03 Edition)

section and § 1.401(a)(9)-2. Thus, for example, the designated beneficiary distributions will be determined as of the annuity starting date. Similarly, if the employee dies after the annuity starting date but before the required beginning date determined under A-2 of § 1.401(a)(9)-2, after the employee's death, the remaining portion of the employee's interest must continue to be distributed in accordance with this section over the remaining period over which distributions commenced (single or joint lives or period certain, as applicable). The rules in § 1.401(a)(9)-3 and section 401(a)(9)(B)(ii) or (iii) and (iv) do not apply.

(b) *Period certain.* If as of the employee's birthday in the year that contains the annuity starting date, the age of the employee is under 70, the following rule applies in applying the rule in paragraph (a) of A-3 of this section. The applicable distribution period for the employee (determined in accordance with the Uniform Lifetime Table in A-2 of § 1.401(a)(9)-9) is the distribution period for age 70 using the Uniform Lifetime Table in A-2 of § 1.401(a)(9)-9 plus the excess of 70 over age of the employee as of the employee's birthday in the year that contains the annuity starting date.

Q-11. What rule applies if distributions commence on an irrevocable basis (except for acceleration) to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A-1 (and if applicable A-4) of this section.

A-11. If distributions commence to the surviving spouse of an employee on an irrevocable basis (except for acceleration) over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A-1 (and if applicable A-4) of this section, distributions will be considered to have begun on the

actual commencement date for purposes of section 401(a)(9)(B)(iv)(II). Consequently, in such case, A-5 of § 1.401(a)(9)-3 and section 401(a)(9)(B)(ii) and (iii) will not apply upon the death of the surviving spouse as though the surviving spouse were the employee. Instead, the annuity distributions must continue to be made, in accordance with the provisions of A-1 (and if applicable A-4) of this section over the remaining period over which distributions commenced (single life or period certain, as applicable).

Q-12. In the case of an annuity contract under an individual account plan from which annuity payments have not commenced to on an irrevocable basis (except for acceleration), how is section 401(a)(9) satisfied with respect to the employee's or beneficiary's entire interest under the annuity contract for the period prior to the date annuity payments so commence?

A-12. Prior to the date that annuity payments commence on an irrevocable basis (except for acceleration) under an individual account plan from an annuity contract, the interest of an employee or beneficiary under that contract is treated as an individual account for purposes of section 401(a)(9). Thus, the required minimum distribution for any year with respect to that interest is determined under § 1.401(a)(9)-5 rather than this section. For purposes of applying the rules in § 1.401(a)(9)-5, the entire interest under the annuity contract as of December 31 of the relevant valuation calendar year is treated as the account balance for the valuation calendar year described in A-3 of § 1.401(a)(9)-5. The entire interest under an annuity contract is the dollar amount credited to the employee or beneficiary under the contract plus the actuarial value of any other benefits (such as minimum survivor benefits) that will be provided under the contract. See A-1 of § 1.401(a)(9)-5 for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence and A-2(a)(3) of § 1.401(a)(9)-8.

[T.D. 8987, 67 FR 18994, Apr. 17, 2002]

### § 1.401(a)(9)-7 Rollovers and transfers.

Q-1. If an amount is distributed by one plan (distributing plan) and is

rolled over to another plan, is the required minimum distribution under the distributing plan affected by the rollover?

A-1. No, if an amount is distributed by one plan and is rolled over to another plan, the amount distributed is still treated as a distribution by the distributing plan for purposes of section 401(a)(9), notwithstanding the rollover. See A-1 of § 1.402(c)-2 for the definition of a rollover and A-7 of § 1.402(c)-2 for rules for determining the portion of any distribution that is not eligible for rollover because it is a required minimum distribution.

Q-2. If an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), how are the benefit and the required minimum distribution under the receiving plan affected?

A-2. If an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), the benefit of the employee under the receiving plan is increased by the amount rolled over for purposes of determining the required minimum distribution for the calendar year immediately following the calendar year in which the amount rolled over is distributed. If the amount rolled over is received after the last valuation date in the calendar year under the receiving plan, the benefit of the employee as of such valuation date, adjusted in accordance with A-3 of § 1.401(a)(9)-5, will be increased by the rollover amount valued as of the date of receipt. In addition, if the amount rolled over is received in a different calendar year from the calendar year in which it is distributed, the amount rolled over is deemed to have been received by the receiving plan in the calendar year in which it was distributed.

Q-3. In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another plan (transferee plan), are there any special rules for satisfying section 401(a)(9) or determining the employee's benefit under the transferor plan?

A-3. (a) In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another (transferee plan), the transfer is not treated as a distribution by the trans-

feror plan for purposes of section 401(a)(9). Instead, the benefit of the employee under the transferor plan is decreased by the amount transferred. However, if any portion of an employee's benefit is transferred in a distribution calendar year with respect to that employee, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the required minimum distribution with respect to that employee for the calendar year of the transfer using the employee's benefit under the transferor plan before the transfer. Additionally, if any portion of an employee's benefit is transferred in the employee's second distribution calendar year but on or before the employee's required beginning date, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the minimum distribution requirement for the employee's first distribution calendar year based on the employee's benefit under the transferor plan before the transfer. The transferor plan may satisfy the minimum distribution requirement for the calendar year of the transfer (and the prior year if applicable) by segregating the amount which must be distributed from the employee's benefit and not transferring that amount. Such amount may be retained by the transferor plan and must be distributed on or before the date required under section 401(a)(9).

(b) For purposes of determining any required minimum distribution for the calendar year immediately following the calendar year in which the transfer occurs, in the case of a transfer after the last valuation date for the calendar year of the transfer under the transferor plan, the benefit of the employee as of such valuation date, adjusted in accordance with A-3 of § 1.401(a)(9)-5, will be decreased by the amount transferred, valued as of the date of the transfer.

Q-4. If an amount of an employee's benefit is transferred from one plan (transferor plan) to another plan (transferee plan), how are the benefit and the required minimum distribution under the transferee plan affected?

A-4. In the case of a transfer from one plan (transferor plan) to another

(transferee plan), the benefit of the employee under the transferee plan is increased by the amount transferred in the same manner as if it were a plan receiving a rollover contribution under A-2 of this section.

Q-5. How is a spinoff, merger or consolidation (as defined in § 1.414(l)-1) treated for purposes of determining an employee's benefit and required minimum distribution under section 401(a)(9)?

A-5. For purposes of determining an employee's benefit and required minimum distribution under section 401(a)(9), a spinoff, a merger, or a consolidation (as defined in § 1.414(l)-1) will be treated as a transfer of the benefits of the employees involved. Consequently, the benefit and required minimum distribution of each employee involved under the transferor and transferee plans will be determined in accordance with A-3 and A-4 of this section.

[T.D. 8987, 67 FR 18994, Apr. 17, 2002]

**§ 1.401(a)(9)-8 Special rules.**

Q-1. What distribution rules apply if an employee is a participant in more than one plan?

A-1. If an employee is a participant in more than one plan, the plans in which the employee participates are not permitted to be aggregated for purposes of testing whether the distribution requirements of section 401(a)(9) are met. The distribution of the benefit of the employee under each plan must separately meet the requirements of section 401(a)(9). For this purpose, a plan described in section 414(k) is treated as two separate plans, a defined contribution plan to the extent benefits are based on an individual account and a defined benefit plan with respect to the remaining benefits.

Q-2. If an employee's benefit under a defined contribution plan is divided into separate accounts (or under a defined benefit plan is divided into segregated shares), do the distribution rules in section 401(a)(9) and these regulations apply separately to each separate account?

A-2. (a) *Defined contribution plan.* (1) Except as otherwise provided in this A-2, if an employee's benefit under a defined contribution plan is divided into

separate accounts under the plan, the separate accounts will be aggregated for purposes of satisfying the rules in section 401(a)(9). Thus, except as otherwise provided in this A-2, all separate accounts, including a separate account for employee contributions under section 72(d)(2), will be aggregated for purposes of section 401(a)(9).

(2) If the employee's benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date on which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) separately apply to such separate account under the plan. However, the applicable distribution period for each such separate account is determined disregarding the other beneficiaries of the employee's benefit only if the separate account is established on a date no later than the last day of the year following the calendar year of the employee's death. For example, if, in the case of a distribution described in section 401(a)(9)(B)(iii) and (iv), the only beneficiary of a separate account under the plan established on a date no later than the end of the year following the calendar year of the employee's death is the employee's surviving spouse, and beneficiaries other than the surviving spouse are designated with respect to the other separate accounts with respect to the employee, distribution of the spouse's separate account under the plan need not commence until the date determined under the first sentence in A-3(b) of § 1.401(a)(9)-3, even if distribution of the other separate accounts under the plan must commence at an earlier date. Similarly, in the case of a distribution after the death of an employee to which section 401(a)(9)(B)(i) does not apply, distribution from a separate account of an employee established on a